Supreme Court, U.S.
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Case No. 85-1136
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

RAINSFORD J. WINSLOW,

Petitioner,

v.

THE MORGAN COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Colorado, Case No. 83 SC 415

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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ISSUE

In the state court system, does jurisdiction to hear a request for an injunction preventing further abuse of the judicial process by a *pro se* litigant lie exclusively with the Colorado Supreme Court?

PARTIES

The Petition for Writ of Certiorari misidentifies Respondent as "The Morgan County Commissioners of Morgan County, Colorado." The parties to the proceeding in the Colorado Supreme Court were:

Board of County Commissioners of Morgan County, Colorado,

Petitioner,

v.

Rainsford J. Winslow,

Respondent.

The Board of County Commissioners of Morgan County, Colorado is hereinafter referred to as the "Board" or "Respondent."

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Constitutional Provisions

Colo. Const., Art. VI, § 2 1

JURISDICTION

Contrary to Petitioner's assertion, the jurisdiction of this Court is not properly invoked pursuant to 28 U.S.C. §1254.

CONSTITUTIONAL PROVISION

The Colorado Supreme Court decision which underlies this Petition for Writ of Certiorari interprets Article VI,§ 2(1) of the Colorado Constitution:

> **Section 2. Appellate Jurisdiction.** (1) The supreme court, ... shall have general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.

RESPONDENT'S STATEMENT OF THE CASE

Contrary to the suggestion which is implicit in Petitioner's Statement of the Case, the Colorado Supreme Court has not yet ruled upon the merits in this case. The facts relevant to this Petition for Writ of Certiorari are as follows:

1. Rainsford J. Winslow ("Winslow" or "Petitioner") filed a series of repetitious and baseless civil claims against the Board on various grounds which are not pertinent to the pending Petition for Writ of Certiorari.

2. The Board filed a Petition for Injunctive Relief in the District Court for Morgan County, Colorado ("Morgan County District Court") seeking to enjoin Winslow from continuing to represent himself in the action which was then pending against the Board and in further *pro se* claims he might file against the Board.

3. After trial, the Morgan County District Court enjoined Winslow from filing further actions or pleadings in the Morgan County District Court as a *pro se* plaintiff. In support of its ruling, the Morgan County District Court found that Winslow:

> has appeared *pro se* before this Court on many occasions ... ; that his pleadings are usually extraordinarily voluminous and replete with irrelevant and immaterial matter; that the actions filed by (Winslow), except for the latest, have all been determined adversely to him; that this latest action appears to be an attempt to raise an issue which is res adjudicata by reason of the Court's judgment in one of (Winslow's) prior suits; that (Winslow's) actions and methods of procedure impose a heavy burden on the resources of this Court .... That the unwarranted burden placed on the operation of this Court due to (Winslow's) actions and the resultant expense thereof are prejudical to the interests of the taxpaying public; that where it is necessary to prohibit such an abuse of the judicial process within this Court, it is within the power and authority of this Court to prevent the further commission of the abuse and the concomitant injury to public rights and interests ....

4. Winslow appealed the Morgan County District Court's injunctive order to the Colorado Court of Appeals ("State Court of Appeals").

5. On its own motion, the State Court of Appeals raised the issue of jurisdiction and held that, under Article VI, § 2(1) of the Colorado Constitution, only the Colorado Supreme Court had jurisdiction to enjoin *pro se* appearances by litigants. On this limited ground, the Morgan County District Court was reversed by the State Court of Appeals.

6. In response to the decision of the State Court of Appeals, the Board filed a Petition for Certiorari in the Colorado Supreme Court, which was granted. The only issue before the Colorado Supreme Court was whether, in the Colorado Court system, jurisdiction to hear a request for an injunction preventing the filing of *pro se* actions or pleadings lies exclusively with the State Supreme Court.

7. On September 30, 1985, the Colorado Supreme Court held that Article VI, § 2 of the Colorado Constitution does not prohibit state district courts from enjoining a litigant from filing *pro se* suits upon a finding of serious abuse of the judicial process. After reversing the State Court of Appeals on this jurisdictional issue, the Colorado Supreme Court remanded the case to the lower appellate court with instructions to consider any substansive issues or findings of fact underlying Winslow's appeal from the state district court's injunctive order.

8. Thereafter, Winslow filed a Petition for Writ of Certiorari in this Court to review the September 30, 1985 judgment of the Colorado Supreme Court.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari is properly denied on the grounds that it is premature, raises no federal question and presents no other special or important reason for this Court's review.

ARGUMENT

Respondent does not address the bulk of Petitioner's argument since it is a general discussion of Petitioner's views on the purported merits of his various cases before the state trial court. As of the date Petitioner filed this Petition for Writ of Certiorari, neither the State Court of Appeals nor the Colorado Supreme Court had considered Petitioner's case on the merits. Therefore, Respondent confines this argument to the issue of state court jurisdiction, which is the only question decided by the Colorado Supreme Court on September 30, 1985.

To the degree Petitioner claims that the Colorado Supreme Court's ruling on state court jurisdiction deprives him of various federal constitutional rights, the Petition is premature and improvidently taken. While Petitioner may view the Colorado Supreme Court's jurisdictional ruling as unfavorable to him, the effect of the decision is merely to remand the case to the State Court of Appeals for consideration on the merits. If Petitioner prevails in the state appellate courts on the merits, the injunction which presently prohibits him from filing *pro se* actions in the Morgan County District Court will presumably be withdrawn by the state trial court. Under these circumstances, Petitioner's present arguments concerning the alleged depriva-

tion of his federal constitutional rights by reason of the injunction will become moot.[1]

In addition to the premature nature of this Petition, the case presents no special nor important questions which merit this Court's review. On the contrary, the Colorado Supreme Court's ruling merely corrects the lower state appellate court's misreading of an earlier state decision.

In the prior decision, the Colorado Supreme Court entered an injunction against further *pro se* representation by a plaintiff who had filed numerous groundless civil claims against his former wife. The Court identified the source of its power to issue injunctions prohibiting *pro se* appearances as Article VI, § 2 of the Colorado Constitution. *Board of County Commissioners v. Barday*, 197 Colo. 519, 521, 594 P.2d 1057, 1058-9 (1979). In the decision which is the subject of this Petition, the Colorado Supreme Court reversed the lower appellate court on the ground that it misconstrued the *Barday* decision by erroneously concluding that Article VI, § 2 of the Colorado Constitution created exclusive jurisdiction in the Colorado Supreme Court to enjoin *pro se* representation when appropriate.

The foregoing Colorado Supreme Court decision addresses no federal question. Prior to September 30, 1985, it was well established under state law that the Colorado Supreme Court could enjoin *pro se* abuses of the judicial process and these issues were generally addressed in the context of original proceedings before the State Supreme

[1] Respondent's argument concerning the premature nature of this Petition for Writ of Certiorari is not affected by the most recent decision of the Colorado Court of Appeals rendered on January 9, 1986, which denied Winslow's appeal on the merits. At the time of writing this brief, counsel is unable to predict whether Winslow will file a Petition for Rehearing in the Colorado Court of Appeals, which is a prerequisite to review by writ of certiorari in the Colorado Supreme Court.

Court. See *Board of County Commissioners v. Howard*, 640 P.2d 1128 (Colo. 1982); *People v. Dunlap*, 623 P.2d 408 (Colo. 1981); *Barday, supra*, *People v. Spencer*, 185 Colo. 377, 524 P.2d 1084 (1974). In its most recent decision, the Colorado Supreme Court merely emphasized that state district courts also have authority to prevent needless disruption of the judicial process. When an instance such as that in the Morgan County District Court occurs, the *pro se* plaintiff may litigate all federal and state constitutional issues before the trial court. In the event the litigant is dissatisfied with the trial court's ruling, he may then seek state appellate review of any constitutional issues followed by a petition for writ of certiorari to this Court. Thus, the September 30, 1985 decision of the Colorado Supreme Court has no impact on Petitioner's federal constitutional rights.

CONCLUSION

Respondent respectfully asks this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24 day of January, 1986, three copies of this BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI have been served upon Rainsford J. Winslow, by placing them in the United States mail, postage prepaid, properly addressed to Petitioner, *pro se* at the address shown on his Petition for Writ of Certiorari:

Rainsford J. Winslow
Morgan Heights, P.O. Box 250
Fort Morgan, Colorado 80701

J. Bayard Young

WinslowBrf (LIT) 1-13-86